

BEFORE THE  
STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement of :  
DAWN MARIE CHARRETTE,

Petitioner.

Case No. 2006-57

OAH No. 2016030003

**ORDER OF DECISION**

**DECISION**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted  
by the Structural Pest Control Board as its Decision in the above-entitled matter.

This Decision shall become effective on June 24, 2016.

IT IS SO ORDERED this 25th day of May 2016.

By: 

BEFORE THE  
STRUCTURAL PEST CONTROL BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement of:

DAWN MARIE CHARRETTE  
Spring Valley, California

Petitioner.

OAH No. 2016030003

**DECISION**

This matter was heard on April 6, 2016, in Sacramento, California, before a quorum of the Structural Pest Control Board (Board) comprised of Dave Tamayo, President, Curtis Good, Vice President, Clifford Utley, Marisa Quiroz, and Mike Duran. Administrative Law Judge Timothy J. Aspinwall, Office of Administrative Hearings, sat with the Board.

Langston Edwards, Deputy Attorney General, represented the Department of Justice, Office of the Attorney General, and appeared pursuant to Government Code section 11522.

Dawn Marie Charrette (petitioner)<sup>1</sup> appeared on her own behalf.

The matter was submitted on April 6, 2016.

**FACTUAL FINDINGS**

*Procedural History*

1. On January 18, 1985, the Board issued Field Representative's License No. FR 12741 (Branch 1) to petitioner as an employee of Diamond Termite and Pest Control. This license was subsequently registered under the employ of A.M.B.D., Inc., dba D & S Termite Control, Spring Valley. Field Representative's License No. FR 12741 was canceled on June 30, 1993.

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<sup>1</sup> Licenses were issued to Dawn Marie Charrette, aka Dawn Marie Dierolf.

2. On May 7, 1993, the Board issued Field Representative License No. FR 21851 (Branch 3) to petitioner as an employee of A.M.B.D., Inc., dba D & S Termite Control, San Diego. This license was cancelled on May 18, 1998.

3. On April 16, 1993, the Board issued Operator's License No. OPR 9119 (Branch 1) to petitioner as an employee of A.M.B.D., Inc., dba D & S Termite Control, San Diego. The address of this license subsequently changed to Spring Valley. Petitioner's operator's license was upgraded to include Branches 1 and 3. On March 1, 2000, petitioner became the Branch 1 and 3 Qualifying Manager of A.M.B.D., Inc., dba D & S Termite Control. On February 6, 2004, petitioner became President and Qualifying Manager of D & S Termite Control, Branches 1 and 3.

4. The San Diego County Agricultural Commissioner levied fines against petitioner's operator's license on April 30, 2003 (\$552), February 29, 2008 (\$400), August 19, 2008 (\$1,400), and May 14, 2012 (\$100). The Board levied a fine against petitioner's operator's license on November 2, 2004 (\$150).<sup>2</sup>

5. The Board filed an Accusation (No. 2006-57) against petitioner's Operator's License No. OPR 9119 on March 3, 2006; a First Amended Accusation on June 13, 2008; and a Second Amended Accusation on January 3, 2011. The Second Amended Accusation charged petitioner with negligence and numerous violations of law and regulation, as is set forth below. (See Factual Finding 7.)

6. After a hearing on remand from the Superior Court, San Diego, the Board by Decision effective June 12, 2013, revoked petitioner's Operator's License No. OPR 9119 (in Branches 1 and 3), for her failure to: "remove all food and medicines before fumigation, for failing to secure an exterior door, and for failing to accurately maintain the fumigation log on March 7, 2005."<sup>3</sup> The Board found that petitioner's actions, as qualifying manager, constituted "disregard for the law, negligence and gross negligence in her failure to comply with the law."

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<sup>2</sup> Fines were levied for alleged violations of Agriculture Code section 15204 (notification requirements); Business and Professions Code sections 8505.7 (fumigation and safety requirements) and 8638 (failure to complete project for the contract price); and California Code of Regulations, title 3, sections 6600 (standards of care for performing pest control) and 6780 (fumigation safe use requirement).

<sup>3</sup> In January 2012, petitioner appealed the Board's Decision to the Superior Court on a writ of mandate. By Decision dated September 30, 2012, the Superior Court remanded the matter on the issue of the appropriate level of discipline to impose absent a finding of gross negligence in failing to conduct a careful search of the subject premises.

7. *Factual Allegations.* On March 7, 2005, D & S fumigated a 30-unit condominium complex located at 4205 Ohio Street, San Diego (Ohio Street Project). The structure was tarped and Vikane gas was injected.<sup>4</sup> It is the responsibility of the licensee in charge to make certain that the structure is properly prepared prior to introducing fumigant. This includes a duty to examine or instruct other employees to examine all units to determine whether all persons have vacated the premises and to remove all food, drug, and medical items from all units. Approximately three hours after the fumigant was introduced into the tarped structure, D & S employees heard cries and noticed movement beneath the tarps. Employees subsequently escorted a female resident of the property out from within the tarps covering the fumigated building. The woman was transported to a local hospital where she was subsequently pronounced dead.

Two days later, on March 9, 2005, an inspection of the victim's unit revealed a number of food, drug, and medical items, which had not been removed prior to fumigation. Investigators instructed petitioner not to remove any items from the units pending the investigation at the Ohio Street Project. However, on March 9, 2005, inspectors observed petitioner in possession of five large garbage bags containing items that she said had been removed from the units after the fumigation. Inspectors determined that these items should have been removed from the units before fumigation. Inspectors identified preparation violations in 20 of the 30 units. On March 11, 2005, inspectors found violations in fumigation logs completed by an employee of D & S, Christopher Parish.

8. *Causes for Discipline.* The Board charged petitioner and other managers and responsible employees with failing to comply with laws regulating pest control. (Bus. & Prof. Code, § 8641.)<sup>5</sup> Specifically, the Board alleged that petitioner and other parties:

- 1) Failed to perform the fumigation on the Ohio Street Project in the manner prescribed by law. (Bus. & Prof. Code, § 8505.4.)
- 2) Failed to ensure that the space to be fumigated was vacated by all occupants before starting the fumigation and all entrances were secured against entry while performing the work. (Bus. & Prof. Code, §§ 8505.6 & 8505.7.)

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<sup>4</sup> Vikane is approved by the Environmental Protection Agency (EPA) for structural fumigation use and it is labeled as a "Toxic Air Contaminant (TAC)." It is colorless and odorless. Its application is highly regulated to avoid negative health effects in humans.

<sup>5</sup> Failure to comply with the provisions of this chapter, or any rule or regulation adopted by the board, or the furnishing of a report of inspection without the making of a bona fide inspection of the premises for wood-destroying pests or organisms, or furnishing a notice of work completed prior to the completion of the work specified in the contract, is a ground for disciplinary action. (Bus. & Prof. Code, § 8641.)

- 3) Failed to properly maintain a log of each fumigation job performed on the Ohio Street Project. (Bus. & Prof. Code, § 8505.13.)
- 4) Negligently handled or used poisonous exterminating agents on the Ohio Street Project. (Bus. & Prof. Code, § 8643.)
- 5) Violated fumigation laws in numerous aspects. (Bus. & Prof. Code, § 8646.)
- 6) Failed to perform fumigation work in a careful manner. (Bus. & Prof. Code, § 8647; Food & Agri. Code, § 11791, subd. (b).) Used pesticides in conflict with the label. (Food & Agri. Code, § 12973.)
- 7) Violated numerous regulations by failing to properly prepare and retain a fumigation log regarding pesticide use on the Ohio Street Project (Cal. Code. Regs., tit. 16, § 1970, subd. (a)), failing to properly secure the property against entry prior to fumigation (Cal. Code. Regs., tit. 16, § 1970.3), and failing to perform pest control in a careful and effective manner. (Cal. Code. Regs., tit. 3, § 6600, subd. (b).)
- 8) Failed in her responsibility as manager and corporate officer of D & S, regardless of whether petitioner (President and Qualifying Manager in Branches 1 and 3), had knowledge of or participated in the acts or omissions which constituted cause for discipline. (Bus. & Prof. Code, § 8624.)

#### *Previous Petition for Reinstatement*

9. Petitioner filed a previous Petition for Reinstatement of Revoked License on July 28, 2014. A hearing on the petition was conducted on October 16, 2014, in Sacramento, California, before a quorum of the Board. The Board issued a decision effective January 11, 2015, denying the petition on the basis that petitioner failed to submit clear and convincing evidence of rehabilitation. The Board found that the nature and severity of petitioner's acts and managing the activities of D & S Termite Control was serious, that she remained in strong denial of the omissions which led to tragic consequences on March 7, 2005, that petitioner demonstrated no remorse or individual responsibility for the death of the victim, and, as such, presents a continuing risk of harm to the public.

#### *Petition for Reinstatement*

10. Petitioner filed the instant Petition for Reinstatement of Revoked License on January 15, 2016. At hearing, petitioner explained her rehabilitative efforts. She testified she has attended numerous continuing education seminars, but does not have certificates of completion for courses completed subsequent to her previous petition for reinstatement because it is difficult to obtain a certificate of completion when she does not have a license. She also testified that she volunteers with high school children in special education classes,

and that she volunteers in church-related children's classes known as AWANA. She did not clarify how often or to what extent she participates in these activities.

11. Since petitioner's operator's license was revoked, she has worked in an administrative managerial capacity at D & S. Petitioner testified that she micromanages the business to make sure the employees "follow the letter of the law." She also testified that she has gone to seminars regarding human resources management.

12. Petitioner feels humiliated and worthless by the revocation of her license, but she accepts the legal outcome. She feels that she has become a better and more diligent person as a result of the disciplinary process. It has been nearly three years since Petitioner lost her license, and she feels sufficiently rehabilitated to have her license restored.

### *Conclusion*

13. Cause exists to deny the Petition for Reinstatement of a Revoked License submitted by petitioner. She failed to submit clear and convincing evidence of rehabilitation. (Cal. Code Regs., tit. 16, § 1937.2, subs. (b) & (c).) Given the seriousness of petitioner's conduct, insufficient time has passed for her to demonstrate rehabilitation by clear and convincing evidence. For these reasons, it would be inconsistent with the public interest to grant the petition for reinstatement.

## LEGAL CONCLUSIONS

1. Government Code section 11522 states:

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefore, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

2. Petitioner bears the burden of establishing that she is now fit to engage in the structural pest control activities for which she seeks a license. The Board has evaluated the evidence submitted by petitioner. Petitioner did not satisfy the Board that she can comply

with the laws regulating pest control. Therefore, she poses a continuing risk of harm to the public. (Cal. Code Regs., tit. 16, § 1937.2, subds. (b) & (c).)

### ORDER

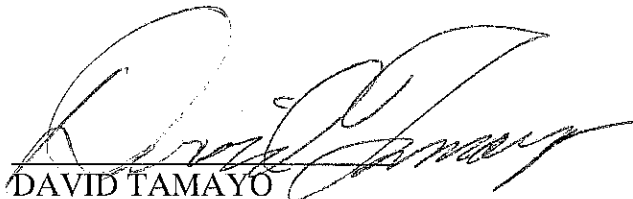
The Petition for Reinstatement of Operator's License No. OPR 9119 (Branches 1 and 3), and licensing rights, filed by Dawn Marie Charrette is DENIED.

This Decision is hereby adopted by the Structural Pest Control Board.

This Decision shall become effective on June 24, 2016.

IT IS SO ORDERED.

Dated: May 25, 2016

A handwritten signature in black ink, appearing to read "David Tamayo", is written over a horizontal line.

DAVID TAMAYO  
President  
Structural Pest Control Board.